Laws of inheritance in Islam and Hinduism: A comparative study

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Abstract:

Laws of inheritance and succession exist since time immemorial in every human society. The estate of the deceased person is distributed amongst his/her legal heirs according to the laws of inheritance. Based on religions i.e. Islam and Hinduism-two different societies exist in the Indo-Pak sub-continent, having different frames of rules regarding socio-religious life. Coupled with a long history of closeness and co-existence, have deep religio-moral and socio-cultural diffusions and infusions with one another. The same impact permeates the laws of inheritance as well. This paper is an analysis of this permeation by focusing on the points of comparison and contrast in the light of the Holy Qur'ān , Sunn'ah and the sacred books of Hindūism.

Introduction:

The inherited wealth (property) has been a bone of contention and cause of disputes in all civilized and uncivilized societies since long because no labor is involved in claiming ownership of inherited property. In the absence of real owners, several people lay claim on the property and begin to clash with each other. That's why every religion and society has realized the importance of inheritance law. Laws have been enacted for distribution of inherited property.

Both Islam and Hindūism lay equal stress on the importance of inheritance and will. Both of the religions have devised rules and principles for it. Like dissimilarities of beliefs, rituals and social norms, there is vast difference between the inheritance laws of Islam and Hindūism owing to variation of time and locale.

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The Islamic principles of inheritance and will are often ignored by the Muslim society of Indian Subcontinent owing to influence of Hindūism on its social life, customs, traditions and family laws. Therefore, it is needed to review hairsbreadth the inheritance laws of Islam and Hinduism. The comparative study of inheritance laws of Islam and Hindūism is as under:

1. Inheritance in Islam:

Importance:

The rules of Inheritance in Islam are fundamental and mandatory part of Islamic Shariah law and known as Ilm-ū l-Farã'i which means the knowledge of obligation or the Science of Inheritance and succession. ". The word al-Farã'idh is plural form of al-Faridhah which means something made obligatory by Allāh (swt).

Learning the science of al- Farã'idh is obligatory on a Muslim Community to fulfill the order of Allāh (swt) in the light of Qur'ān and Sunn'ah. About inheritance the Holy Qur'ān informs us that the wisdom behind this system of distribution is completely known to Allāh only and not the common people/man Qur'ān says:

"You know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allāh . Indeed, Allāh is ever Knowing and Wise". (1)

Other verses of the Holy Qur'ān run as:

These are the limits [set by] Allāh , and whoever obeys Allāh and His Messenger will be admitted by Him to gardens [in Paradise] under which rivers flow, abiding eternally therein; and that is the great attainment. And whoever disobeys Allāh and His Messenger and transgresses His limits - He will put him into the Fire to abide eternally therein, and he will have a humiliating punishment.(2)

It is very difficult to be just while distributing the possessions of the deceased; everyone is concerned primarily for his own interests and wants to procure the maximum share for one's own self. Almighty Allāh has categorically stated the laws of inheritance lets the people may go astray.

In the light of these teachings of the Holy Qur'ān the Holy Prophet has stressed upon the need for teaching and learning Ilm-ū l-Farã'idh.

Abu Hurairah reported that the Prophet (pbuh) said: "O Abu Hurairah, learn Farã'idh (the shares of the inheritance that are prescribed in the Qur'ān) and teach it to them. Indeed it is half of the knowledge." (3)

Abdullah bin Abbas (ra) reported that the Prophet (pbuh) said: "Give the Farã'idh (the shares of the inheritance that are prescribed in the Qur'ān) to those who are entitled to receive it. Then whatever remains, should be given to the closed male relative of the deceased. (4)

Due to these sayings and reiteration of the Holy Prophet (S.A .W) the teaching and learning of Ilm-ū l-Farã'idh has attracted the attention of the companions of the Holy Prophet and Muslim scholars in almost each and every period of Islamic history. They, infect denoted their whole lines for the elucidation and exposition of these laws.

1.2 Inheritance and Quranic Text:

Inheritance in an integral part of Islamic Shariah Law and its application in Islamic society is a mandatory aspect of Devine teaching of Islam. Muslim inherits from each other is proven from Quran:

"There is a share for men and a share for women from what is left by parents and those nearest related, whether, the property be small or large - a legal share." (5)

Prescribed for you when death approaches [any] one of you if he leaves wealth [is that he should make] a bequest for the parents and near relatives according to what is acceptable - a duty upon the righteous. (6)

"There is a share for men and a share for women from what is left by parents and those nearest related, whether, the property be small or large - a legal share. (7)

" And when the relatives and the orphans and AlMasākin (the poor) are present at the time of division, give them out of the property, and speak to them words of kindness and justice" (8)

"And let those (executors and guardians) have the same fear in their minds as they would have for their own, if they had left weak offspring behind. So let them fear Allāh and speak right words." (9)

" And for all, We have made heirs to what is left by parents and relatives. And to those whom your oaths have bound [to you] – give them their share. Indeed Allāh is ever, over all things, a Witness" (10)

Allāh instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allāh . Indeed, Allāh is ever Knowing and Wise. (11)

And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they

[may have] made or debt. And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt, as long as there is no detriment [caused]. [This is] an ordinance from Allāh , and Allāh is Knowing and Forbearing.(12)

And whoever disobeys Allāh and His Messenger and transgresses His limits - He will put him into the Fire to abide eternally therein, and he will have a humiliating punishment. (13)

1.3 Inheritance and Sunna Text:

1.3.1 Writing of the Will:

Narrated Abdullah bin Umar: Allāh's Apostle said, "It is not permissible for any Muslim who has something to will to stay for two nights without having his last will and testament written and kept ready with him." (14)

1.3.2 Limit Of the Will:

Narrated Sad bin Abu Waqqas: “The Prophet came visiting me while I was (sick) in Mecca, ('Amir the sub-narrator said, and he disliked to die in the land, whence he had already migrated). He (i.e. the Prophet) said, "May Allāh bestow His Mercy on Ibn Afra (Sad bin Khaula)." I said, "O Allāh's Apostle! May I will all my property (in charity)?" He said, "No." I said, "Then may I will half of it?" He said, "No". I said, "One third?" He said: "Yes, one third, yet even one third is too much. It is better for you to leave your inheritors wealthy than to leave them poor begging others, and whatever you spend for Allāh's sake will be considered as a charitable deed even the handful of food you put in your wife's mouth. Allāh may lengthen your age so that some people may benefit by you, and some others be harmed by you." At that time Sad had only one daughter.”(15)

Narrated Ibn 'Abbas: “I recommend that people reduce the proportion of what they bequeath by will to the fourth (of the whole legacy), for Allāh's Apostle said, "One-third, yet even one third is too much."” (16)

1.4 Rules of Inheritance:

1.4.1 Necessary conditions before Inheritance:

Before any execution of Will and Inheritance, following conditions are essentials:

1. Death of the porosities:

a. Death must be proven

b. Either physical death (de facto) or legal death (de jure) as in case of missing person.

2. Heirs must be alive:

a. Only heirs alive are entitled to inheritance

b. If an heir dies before distribution of inheritance, then his portion is taken by his inheritors

c. Unborn child in fetus (embryo) will inherit if he is born alive.

3. Estate or property must be left by the deceased.

1.4.2 Inclusion:

A. Causes of Inheritance:

There are three causes a person or claimant is considered as lawful claimant of inheritance:

1. Marital tie (Nikah)

2. Blood Relation (Nasab)

a. In Sunni Islamic Law, it relates to paternal connections only

b. Illegitimate child are not considered lawful inheritors

3. Association or friendship bond (Wala)

This is further divided into two by Hanafi jurists:

a. Wala Al-Itāq or Mawla Al-Itāq meaning master of the manumitted slave

b. Wala Al-Mawala or Mawla al-Mawala meaning inheritor/successor by contract.

A heir may have more than one causes of inheritance, e.g. husband who inherit fixed share and may also be an agnatic cousin

B. Basic Principles for Inclusion:

The basic principles of Inheritance are fifteen, seven of them are in Quran and 5 are described in Sunn'ah, and 3 are based on Ijma/Qiyas.

Group of seven whose share is defined in the Holy Quran:

The children (male/female) of the deceased

- Parents of the deceased when deceased have children
- Parents of the deceased when deceased do not have children
- Husband
- Wife (wives) / Widow
- Uterine Bothers on Mother's side

- Full Brothers
- Whose share is defined in Sunn'ah:
- The Wala (Friendship bond)
- Sisters become (al-Asabah) "Residuary" inheritors. They get what is left over after the other heirs take their Primary Heirs.
- Relatives (based on hadith: "you give fixed sharers (or Primary Heirs) to the ones who are entitled, what they leave will go the nearest male relative")
- Grandmother gets 1/6 (based on "give the grandmothers a sixth"
- Sister (based on hadith "give the daughter 1/2, the granddaughter 1/6 and what is left will go to the sister")
- Three from consensus i.e. Ijma
- Consensus on treating grandson as son, granddaughter as daughter provided later is nonexistent.
- Grandfather is treated as father, when father is nonexistent
- Sister on father's side is taken as sister of both sides (father and mother)

(d) **Exclusions:**

Impediments to Inheritance:

There are four causes that impede a person from inheritance:

1. **Homicide (al-Qatl** Prophet (pbuh) said: "One who kills a man cannot inherit from him" (17). Hence, all Jurists agree that murderer or killer shall not inherit from victim. There are exceptions to this rule if killing is justifiable or self-defense or war or unintentional etc.
2. **Difference of Religion:** Prophet (pbuh) said: "A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim" (18).
3. **Slavery:** All Jurists agree that slavery is a bar to inheritance. A slave will not inherit and will not be inherited.
4. **Difference in Country:** Resident of Dar-ul-Kufr doesn't not inherit from citizen of Dar-ul-Islam. However, the contemporary scholars applied these impediments to non-Muslims only.

Rules of Exclusions:

A potential heir can be excluded from inheritance in following two ways.

- Never Excluded.
- Partially Excluded.

- Totally Excluded;
- Converted into Residuary.

Never Excluded:

- Out of these twelve primary heirs, five of them always get their shares and seven of them some time are left out.
- Five heirs are never excluded from their share; however their share may be reduced. These five includes: 1. Father 2. Mother 3. Husband 4. Wife (wives) 5. Daughter (s).
- Ironically, the son is not mentioned in Quran as a primary heir and he always inherits as residuary. Son is residuary and he always gets his share as a residuary, details later.

Partially Excluded:

1. **Principle of impediments:** When a potential inheritor is connected to the deceased through another person and if that person is present or alive, then the potential inheritor is impeded by that other person. E.g. Grandson is impeded from inheritance if the son is present.
2. **Principle of Nearer in Relation:** The person nearer in relation can deprive the person who is farther in relation to the deceased. This rule is more applied in case of Al-Asabah.

Converted into Residuary:

Some primary heirs can be converted into Residuary (secondary heir) under certain conditions. They include: 1. Father 2. Mother 3. Full Sister 4. True Grandfather 5.Daughter 6. Sister from Father's Side 7. Son's Daughter.

1.5 Tarikah or estate behind left:

(a) **Definition**:

(Tarikah) can be defined as gross estate of the deceased prior to deduction of rights and claims attached to it.

The Estate includes:

1. All property, movable/immovable, self acquired/ancestral etc.
2. All Debts
3. All peculiar rights (contracts, options, compensations)
4. Blood money (Diyah), if the person deceased was killed

Life insurance is not considered part of estate, as life insurance is considered haram in Shariah.

(a) Procedure of Distribution:

There are three things which are to be satisfied first. The first and foremost is the funeral expenses. All the schools of thought agree that funeral expenses must be disbursed before payment of debts or will. It is recommended that the funeral takes place while following the Sunn'ah of the Prophet.

After the payment of death-bed charges and funeral expenses, the next thing to be satisfied is the debts of the deceased. Than any valid bequest out of one third of what remains is to be satisfied. After fulfilling funeral charges, debts and valid bequest the remaining estate will be distributed amongst the legal heirs

(b) **Shares of the legal heirs**:

The Holly Quran on the subject of Islamic inheritance, heirs and prescribed

Shears says:

Allāh instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allāh . Indeed, Allāh is ever Knowing and Wise. (19)

And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have] made or debt. And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt, as long as there is no detriment [caused]. [This is] an ordinance from Allāh, and Allāh is Knowing and Forbearing.(20)

2 Laws of Inheritance and succession: in Hinduism:

2.1 Historical Background:

The laws of inheritance in Hindūism are a result of a long process of Evolution. Just like the principles of social rites and worship the laws of Inheritance is complicated too. Therefore, before discussing the laws of Inheritance, we will briefly analyze the source of these laws.

The law in Hindūism has been derived from four sources. The first one is The "Vedas" the other three sources include Sruti (what is heard), Smrti. (What is remembered) and ***Acara*** (what is practiced by the virtuous among The people).So the history of the principles of legal system in Hindūism can be divided into three periods.

The first period is attributed to the Vedas. Nothing can be inferred from this Period about the system of inheritance as no signs of a succession can be found. Though some evidence can be found about their social and economic System Which was dependant upon their joined family system. A professor of history and economics Dr .G.B .Jhatta Ram states about the Family and economic system of Hindus: "One thing that differentiates the hindu's social system is their combined Family System.In west a family consists of a person's spouse and children

Only, But in India even up to three generation of a family live in a combined system and they are all thought of as a part of one family .these people Living together usually share their estates and even eat and worship together. The customs and rites of the family would determine the rules of the succession estate too." (21) In the second period a development was seen in this system. The laws Regarding Succession were developed.

The details of those laws is given in the shastras and Srutis.among these the important books include Manu shastar , Arth Shastra etc.

2.2 Rules of Inheritance according to the Laws of Manu:

According to the rules the funeral expenses and debts are satisfied first. The Funeral cake called "sharadh" holds a central position in the funeral rites. Paying the debts of the deceased is the responsibility of the successor. The Successor has to pay it himself if the deceased hasn,t left enough for his Debts to be satisfied. if the widow of the deceased is not burnt alive, her livelihood are borne by the successors. In the laws of Manu the eldest son gets the most responsibilities of the Household including the religious, social and economic responsibilities also Lie on the shoulders of the eldest son.

Twelve types of male are usually considered as legitimate of these twelve kinds only six kinds antitled to inheritance. The laws of Manu state:

Among the twelve sons of men whom Manu, sprung from the Self-existent (Svayambhu), enumerates, six are kinsmen and heirs, and six not heirs, (but) kinsmen.The legitimate son of the body, the son begotten on a wife, the son adopted, the son made, the son secretly born, and the son cast off, (are) the six heirs and kinsmen.The son of an unmarried damsel, the son received with the wife, the son bought, the son begotten on a re-married woman, the son self-given, and the son of a Sudra female, (are) the six (who are) not heirs, (but) kinsmen. (22)

About the legitimate sons and their ranking regarding shares in inheritance Manu says:

The legitimate son and the son of the wife (thus) share the father's estate; but the other tell become members of the family, and inherit according to their order (each later named on failure of those named earlier). Him whom a man

begets on his own wedded wife, let him know to be a legitimate son of the body (Aurasa), the first in rank.. He who was begotten according to the peculiar law (of the Niyoga) on the appointed wife of a dead man, of a eunuch, or of one diseased, is called a son begotten on a wife (Kshetraga).. That (boy) equal (by caste) whom his mother or his father affectionately give, (confirming the gift) with (a libation of) water, in times of distress (to a man) as his son, must be considered as an adopted son (Datrima).. But he is considered a son made (Kritrima) whom (a man) makes his son, (he being) equal (by caste), acquainted with (the distinctions between) right and wrong, (and) endowed with filial virtues. If (a child) be born in a man's house and his father be not known, he is a son born secretly in the house (Gudhotpanna), and shall belong to him of whose wife he was born.. He whom (a man) receives as his son, (after he has been) deserted by his parents or by either of them, is called a son cast off (Apaviddha). A son whom a damsel secretly bears in the house of her father, one shall name the son of an unmarried damsel (Kanina, and declare) such offspring of an unmarried girl (to belong) to him who weds her (afterwards).. If one marries, either knowingly or unknowingly, a pregnant (bride), the child in her womb belongs to him who weds her, and is called (a son) received with the bride (Sahodha).. If a man buys a (boy), whether equal or unequal (in good qualities), from his father and mother for the sake of having a son, that (child) is called a (son) bought (Kritaka).. If a woman abandoned by her husband, or a widow, of her own accord contracts a second marriage and bears (a son), he is called the son of a re-married woman (Paunarbhava).. If she be (still) a virgin, or one who returned (to her first husband) after leaving him, she is worthy to again perform with her second (or first deserted) husband the (nuptial) ceremony.. He who, having lost his parents or being abandoned (by them) without (just) cause, gives himself to a (man), is called a son self-given (Svayamdatta). The son whom a Brahmana begets through lust on a Sudra female is, (though) alive (parayan), a corpse (sava), and hence called a Parasava (a living corpse). A son who is (begotten) by a Sudra on a female slave, or on the female slave of his slave, may, if permitted (by his father), take a share (of the inheritance); thus the law is settled. These eleven, the son begotten on the wife and the rest as enumerated (above), the wise call substitutes for a son, (taken) in order (to prevent) a failure of the (funeral) ceremonies.. Those sons, who have been mentioned in connection with (the legitimate son of the body), being begotten by strangers, belong (in reality) to him from whose seed they sprang, but not to the other (man who took them). (23)

According to the laws of Manu or Manava Dharma Shastra, male children have equal share in the inheritance. However, primogeniture is entitled to get an additional 20 percent of the entire inheritance as he relieves his father from the worries of dependents. He is also given the best cattle heads because the eldest son is born for the implementation of law and the remaining children are considered a result of human lust and desire. The middle son is given half of

the share of the eldest son while the youngest is entitled to get one fourth of it. Mano says:

After the death of the father and of the mother, the brothers, being assembled, may divide among themselves in equal shares the paternal (and the maternal) estate; for, they have no power (over it) while the parents live.. (Or) the eldest alone may take the whole paternal estate, the others shall live under him just as (they lived) under their father.. Immediately on the birth of his first-born a man is (called) the father of a son and is freed from the debt to the manes; that (son), therefore, is worthy (to receive) the whole estate.. That son alone on whom he throws his debt and through whom he obtains immortality, is begotten for (the fulfilment of) the law; all the rest they consider the offspring of desire. As a father (supports) his sons, so let the eldest support his younger brothers, and let them also in accordance with the law behave towards their eldest brother as sons (behave towards their father). The eldest (son) makes the family prosperous or, on the contrary, brings it to ruin; the eldest (is considered) among men most worthy of honour, the eldest is not treated with disrespect by the virtuous. If the eldest brother behaves as an eldest brother (ought to do), he (must be treated) like a mother and like a father; but if he behaves in a manner unworthy of an eldest brother, he should yet be honored like a kinsman. (24)

Although Hindūism favors monogamy, yet polygamy is allowed in certain circumstances. Below are the rules of Manava Dharma Shastra about distribution of property among sons of a man from different wives, belonging to various castes.

The rules (given above) must be understood (to apply) to a distribution among sons of women of the same (caste); hear (now the law) concerning those begotten by one man on many wives of different (castes).

If there be four wives of a Brahmana in the direct order of the castes, the rule for the division (of the estate) among the sons born of them is as follows:

. The (slave) who tills (the field), the bull kept for impregnating cows, the vehicle, the ornaments, and the house shall be given as an additional portion to the Brahmana (son), and one most excellent share.

Let the son of the Brahmana (wife) take three shares of the (remainder of the) estate, the son of the Kshatriya two, the son of the Vaisya a share and a half, and the son of the Sudra may take one share.

. Or let him who knows the law make ten shares of the whole estate, and justly distribute them according to the following rule:

The Brahmana (son) shall take four shares, son of the Kshatriya (wife) three, the son of the Vaisya shall have two parts, the son of the Sudra may take one share.

Whether (a Brahmana) have sons or have no sons (by wives of the twice-born castes), the (heir) must, according to the law, give to the son of a Sudra (wife) no more than a tenth (part of his estate).

The son of a Brahmana, a Kshatriya, and a Vaisya by a Sudra (wife) receives no share of the inheritance; whatever his father may give to him, that shall be his property. (25)

Male children are given importance in the social and religious life of Hindus. Manu says that a man conquers the world because of his son, reaches eternity because of his grandfather and goes to Suraj Lok because of his great-grandson. A son is called 'Putter' because he saves his father from a specific hell, called Put. Putter means a savior from Put. It is also said that there is no difference between the son of a son and the son of a daughter as he also saves his grandfather from hell incase he (grandfather) has no male children. Therefore, the share of a son of son and son of a daughter is equal in inheritance. (26)

Only unmarried daughter gets a share in the will. Married daughter, mother and other female members of the family are not given any share in the will. However, if a man has no male children, he can appoint (Patrika) his married daughter, telling her husband that the son born to her will be responsible for his last rituals. It enables the daughter and her son to become his heir. The share of mother is also given to the same married daughter. (27)

In Hindūism an adopted son can also inherit the property. There are tow types of adoption that are called Watram and Kartram. The former is similar to donation wherein parents 'donate' their son to a member of their nation when they face hard time. In Kartram, a man, who has no male children, adopts a child. In both the cases, the adopted son has relation with his real father and he is not entitled to get a share in the will of his real father. He becomes a family member of the man, who ah adopted him. He is given share in the will of the adopted father. However, equality in terms of caste and maturity and sanity are basic conditions for it. (28)

2.3 Arthassastra of Kautilya's and Division of Inheritance:

The rules of inheritance in Arthassastra of Kautilya's are mostly derived from Mano Shastra along with improvement regarding the need of the time, as stated in Arthassastra, Kautilya says about the distribution of inheritance:

"Division of inheritance shall be made when all the inheritors have attained their majority. If it is made before, the minors shall have their shares, free of all debts.

These shares of the minors shall be placed in the safe custody of the relatives of their mothers, or of aged gentlemen of the village till they attain their majority. The same rule shall hold good in the case of those who have gone abroad."(29)

A father has full authority over his property in his lifetime. He can distribute his property in his lifetime if he wants. However, it is stressed that he should not ignore any of his sons without a valid reason and should avoid favoritism, discrimination and injustice, if he distributes his property in his lifetime. [30]

However, a father can deprive his non-obedient and defiant son of his will if he distributes his property in his lifetime. Besides, those people, who are exorcized by the caste, family and clan, as well as patients of leprosy, insane and dumb people have no share in the inheritance. The property of an issueless person becomes the property of king. However, Brahmins are exempted from the rule. The property of Brahmin is distributed among the needy and deserving people.[31]

2.4 Inheritance in the Modern Law:

In the modern age, two sources of inheritance law are considered authentic according to Hinduism. These two sources are called Diya Bhaag and Mitākṣarā. According to Mitākṣarā, sons are joint owners of the property of their father in his lifetime. But under the rule of Diya Bhag, father is the lone owner of his property until he is alive. His sons become the owners of the property on his death. In the both the ways, a father is a powerful manager of the property till he is alive. There is only difference of ownership in both the rules. Under Diya Bhag, a father is the lone owner of the property while in Mitākṣarā his sons are also considered owners of the property. According to Diya Bhag property is distributed only among brothers and their scions. There is no concept of distributing property between the father and son because the latter is not owner of the property. In contrast, according to Mitākṣarā, property can be distributed among father and his sons as all of them own the property jointly.

Inheritance means transfer of property after the death of its owner, so no question of inheritance can arise in a joint family, according to Mitākṣarā. As the ownership remains unchanged after the death of a family member, so the property remains undistributed. According to Diya Bhag, the question of inheritance arises when a family member, especially father, dies and the share of the deceased is given to his heir.

According to the Act 156 of Inheritance Law of India, the property of a deceased Hindu, including the followers of Virashaiva, Langit, Brahmo Samaj, Arya Samaj, Buddhism, Jeen Mata, Sikh and all people living in India except Muslims, Christians, Parsis and Jews[32] is distributed among his legal and illegal children. The women are also given their share in the will.

Conclusion:

1) Both Islam and Hindūism lay stress on the distribution of inherited property. Both the religions urge that inherited property should be distributed according to religious law. The Holy Quran terms inheritance 'a duty from

Allāh Almighty'[33]) while Manava Dharma Shastra calls illegal distribution of inheritance a violation from religion.[34] Garaha Sutra directs for making a fire, which is a symbol of justice as well as religious sacredness, at the time of distribution of inheritance. [35]

2) The inheritance law of Islam is unchangeable while rules of inheritance in Hindūism have passed through different evolutionary phases that include Vedic communism, tribal system of joint property and family system of joint property. The Inheritance Act 1956 is a combination of religion and atheism.

3) The Holy Quran has specified shares of men and women in will while Manava Dharma Shastra doesn't allow women, except unmarried daughter, to get a share in the inheritance because it recognizes only male children as heirs.

References:

1. Al.Quran, 4:11
2. Ibid: 4:13,14
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